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Gibby Novelties, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual) CASE NO. C 07 3947 SI
vs.)
Plaintiff,)
vs.)
WILLIAM TULL; DANIEL GIBBY;)
GIBBY NOVELTIES, LLC dba ARSENIC)
& APPLE PIE, a California Limited)
Liability Corporation and DOES 1 through)
20, inclusive,)
Defendants.)
And Related Counter-Claim of Tull)
vs.)
) AFFIDAVIT OF DANIEL GIBBY IN SUPPORT)
) OF DEFENDANTS' REPLY TO OPPOSITION)
) TO DEFENDANTS' MOTION FOR SUMMARY)
) JUDGMENT)
) April 25, 2008)
) 9:00 a.m.)
) Judge Illston, Courtroom 10)
) The Federal Building)
450 Golden Gate Avenue)
San Francisco, CA 94102)

Complaint filed: August 1, 2007

The Undersigned, Daniel Gibby, does hereby state and declare as follows:

1. I am one of the individual Defendants, and the sole member of Gibby Novelties.

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AFFIDAVIT OF DANIEL GIBBY IN SUPPORT OF REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

1 LLC in the above-captioned matter and submit the following in support of
2 Defendants' Reply to Opposition to Defendants' Motion for Summary Judgment;

3 2. The following facts are based on my personal knowledge of same, having
4 personally witnessed the events and facts described, except as to those matters
5 stated on information and belief and as to said matters I believe them to be true;

6 3. I acquired the left-over Trailer Trash Doll inventory of Arsenic & Apple Pie, LLC,
7 from William Tull on July 15, 2004. At that time, I purchased the remaining
8 unsold inventory of 1200 Trailer Trash Dolls, 17 Blonde Drag Queen Dolls and
9 216 Redhead Drag Queen Dolls, a total of 1,433 dolls, including damaged or
10 unsellable units, for the sum of \$4,000. The price also included the rights to the
11 Arsenic & Apple Pie name, its business goodwill and all intellectual property
12 rights in the aforementioned dolls;

13 4. Neither I nor Gibby Novelties, LLC, have copied, remanufactured, produced or
14 marketed any new or additional Trailer Trash, Blonde Drag Queen or Redhead
15 Drag Queen Dolls since July 15, 2004. All three doll models have been sold out
16 and I have not tried to resume production;

17 5. In late 2004, I created and designed two new Trailer Trash doll models,
18 significantly different in many important aspects from two doll models which
19 Plaintiff submitted copyright registrations for on July 2, 2004. Using my own
20 ideas and designs, I created a talking pregnant trailer trash doll which I named
21 "Trash Talkin' Turleen, as well as a "JerWayne Junior" male doll. Both dolls were
22 conceived, designed, developed, produced and manufactured by Gibby
23 Novelties, LLC and feature stereotypical makeup, costume and accessory items
24 drawn from American culture, media images and the entertainment industry. I
25 did not utilize, draw from, base or derive my concepts for the Turleen and
26 JerWayne dolls upon anything which was developed by Paul Montwillo,
27 especially any designs for which he claimed or perfected any copyright

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AFFIDAVIT OF DANIEL GIBBY IN SUPPORT OF REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR
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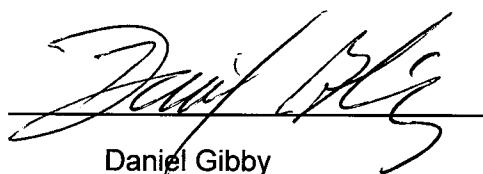
1 registrations;

2 6. I was unaware of any copyright registrations or claims being made by Plaintiff
3 regarding any copyright interests to any of the five doll models which are
4 identified in the instant action until Plaintiff filed this Action in August of 2007.

5 7. I have reviewed the attached Reply Memorandum in Opposition to Defendants'
6 Motion for Summary Judgment and attest that any and all supporting facts set
7 forth therein which I have neglected to mention above are, in fact, true and
8 correct, except as to those matters stated on information and belief and as to
9 same I believe them to be true.

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11
12 I hereby declare and affirm under penalty of perjury under the laws of the State of
13 California that the foregoing is true and correct and that if called to testify I could and would do
14 so competently and of my own personal knowledge.

15 Executed this 10 day of April, 2008, in San Anselmo, California.

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Daniel Gibby

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AFFIDAVIT OF DANIEL GIBBY IN SUPPORT OF REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR
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